

# **REMEDIAL POLICY OPTIONS FOR CITY OF GREENSBORO SMALL BUSINESS ENTERPRISE AND MINORITY WOMEN BUSINESS ENTERPRISE PROGRAMS**

**(Prepared by Franklin M. Lee, Esquire 3-6-13)**

## **Introduction**

The following policy option matrices and recommendations are based upon our legal review of the June 14, 2012 Final Report entitled “Disparity Study for the Minority / Women Business Enterprise Program” (“Study”) performed for the City of Greensboro, NC by MGT of America, Inc. Tables I-A and I-B below summarize the remedial industry-specific Small Business Enterprise (“SBE”) and /or minority/women business enterprise (“M/WBE”) policy options that may be legally defensible and somewhat effective in addressing barriers to M/WBE participation in City of Greensboro (“Greensboro” or “City”) contracts. Table I-A reflects those recommendations for industry-specific remedial policy options that are race- and gender-neutral. Table I-B reflects those recommendations for industry-specific remedial policy options that are race- and gender-conscious. (“R/N” references in the name of a policy option mean that the proposed policy is a “race- and gender-neutral” remedy. “R/C” references in the name of a policy option mean that the proposed policy is a “race- and gender-conscious” remedy.)

Table II summarizes miscellaneous procurement policy reforms and non-industry-specific small / minority / women business enterprise policies that are worthy of consideration by the City based upon a review of the full factual predicate evidence gathered from this Study effort. As a result of U.S. Supreme Court precedents requiring narrow tailoring of remedies under the “strict scrutiny” standard, the City should first consider the use of race- and gender-neutral remedial options as reflected in Tables I-A and II, and only resort to the race- and gender-conscious remedial options reflected in Tables I-B and II when it has reason to believe that neutral remedies, in and of themselves, will be insufficient to fully eliminate disparities resulting from discrimination.<sup>1</sup>

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<sup>1</sup> This Policy Option Matrix includes a total of 44 various policy recommendations, of which 24 are race-and gender-neutral and 20 are race-and gender-conscious in nature. Eight of the twelve non-industry-specific policy options described in Table II are race- and gender-neutral. Four of the twelve non-industry-specific policy options are race- and gender- conscious. Those four non-industry-specific race- and gender- conscious policy options either address administrative problems that undermined the effectiveness of the M/WBE programs, or address identified barriers to the business formation and growth of M/WBE firms that are influenced by race or gender regardless of industry (e.g., unequal access to bonding and capital).

**TABLE I-A: RACE / GENDER-NEUTRAL POLICY OPTIONS FOR CITY OF GREENSBORO S/M/WBE PROGRAM**

(Prepared by Franklin M. Lee, Esquire 3-6-13)

<b><u>Industry Specific Programs</u></b>	<b><u>MGT Recommendations</u></b>	<b><u>Additional Options</u></b>	<b><u>Relevant Findings / Justifications</u></b>	<b><u>Pros &amp; Cons</u></b>
<p>Construction (R/N-1)</p> <p><i>Small Business Enterprise Prime Contract Program</i></p>		<p>Small Business Enterprise program for small prime contracts of \$500,000 or less with size standard categories based upon industry for small business firms</p> <p>SBE – size standard equal to 25% of SBA small business size standard for construction (provide evaluation preference for SBE primes bidding on</p>	<p>Significant disparity and underutilization in City M/WBE construction prime contract participation African American and WBEs; (Study p. E-VII, Exhibit E-5); regression analysis based upon PUMS data indicates disparities are not likely explained by differences in capacity, especially at the subcontracting level. (Study p. 6-39).</p>	<p><i>Pro: Enhances capacity development and competition in prime contracting overall; provides assistance for emerging firms, as well as for more established small firms; prevents larger established small firms from squeezing out emerging new entrants; more inclusive than single size standard.</i></p>

<p>Construction (R/N-1)</p> <p><i>SBE Prime Contract Program (continued)</i></p>		<p>alternative delivery method construction contracts; permit waiver of bonding requirements for prime contracts below \$500,000)</p> <p>(Reserve subset of small prime contracts valued at below \$30,000 for competition solely among SBEs.)</p>		<p><i>Con: Short term reduction of competition on smaller contracts; possible adverse cost impact; greater administrative challenge than managing a single size standard; requires careful consideration of selection of remedy on project-by-project basis; MGT's capacity analysis indicates that relative size or capacity of M/WBE firms is not a likely barrier to award of small construction contracts below \$500,000. (Study, p. 6-39).</i></p>
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<b><u>Industry Specific Programs</u></b>	<b><u>MGT Recommendations</u></b>	<b><u>Additional Options</u></b>	<b><u>Relevant Findings / Justifications</u></b>	<b><u>Pros &amp; Cons</u></b>
<p>Construction (R/N-2)</p> <p><i>SBE Subcontracting Program</i></p>	<p>Mandatory subcontracting outreach program with SBE subcontract goals. (Study E-3, p. E-IX; Recommendation 8-6, p. 8-12).</p>	<p>Mandatory good faith outreach by primes to satisfy contract-specific SBE subcontracting goals; centralized bidder registration system can significantly improve outreach and facilitate documentation of availability by specific trade.</p>	<p>Significant disparity and underutilization in City M/WBE construction subcontract participation for African American, Asian American, Native American, and non-minority WBE categories of M/WBEs; (Study p. E-I, Exhibit E-3, p. E-IV).</p>	<p><i>Pro: Enhances capacity development and competition in subcontracting overall; provides assistance for emerging firms, as well as for more established small firms; prevents larger established firms from squeezing out small firms;</i></p> <p><i>Con: Short term reduction of competition on subcontracts; possible adverse cost impact; greater administrative challenge than managing a single uniform goal; requires careful consideration of selection of remedy</i></p>

Construction (R/N-2)  <i>SBE Subcontracting Program</i> (continued)				<i>on project-by-project basis.</i>
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<u>Industry Specific Programs</u>	<u>MGT Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros &amp; Cons</u>
<p>Construction (R/N-3)</p> <p><i>HUBZone Program</i></p>	<p>Apply federal HUBZone program to provide incentives for selection of SBE primes located in locally distressed areas. (Recommendation 8-7; Study p. 8-12).</p>	<p>Reserve subset of prime contracts for competition among federal certified HUBZone firms, with at least 35% of employees residing in City HUBZone in East Greensboro, and principal place of business located in Greensboro HUBZone. <b>[Consider alternative definition of HUBZone based upon median income and unemployment and higher percentage of employees hired within HUBZone.]</b></p>	<p>Significant disparity and underutilization in City M/WBE construction prime contract participation African American and WBEs; (Study p. E-VII, Exhibit E-5); regression analysis based upon PUMS data indicates disparities are not likely explained by differences in capacity, especially at the subcontracting level. (Study p. 6-39).</p>	<p><i>Pro: Builds capacity of HUBZone primes on mid-sized contracts; provides management experience to HUBZone firms; Enhances economic development attributes of program due to employment aspect; provides local economic development benefits.</i></p> <p><i>Con: Some increase in costs may result. Many M/WBE firms are not HUBZone certified, and it is not known if they would be eligible to be certified as such. Only 19 HUBZone firms in Greensboro market are M/WBEs. (Study, p. 8-13)</i></p>

<b><u>Industry Specific Programs</u></b>	<b><u>MGT Recommendations</u></b>	<b><u>Additional Options</u></b>	<b><u>Relevant Findings / Justifications</u></b>	<b><u>Pros &amp; Cons</u></b>
<p>Construction (R/N-4)</p> <p><i>Bonding Assistance</i></p>		<p>City establishes a pool of up to \$5 million for providing bonding assistance to SBE construction firms; funds used to provide technical and financial assistance to SBE prime bidders to minimize risk of loss and insure management of funds during projects; surety issues bonds at competitive rates with partial guarantee from pool; projects segmented to reduce required bonding limits and to permit waivers of bonds on contracts below \$500,000 for qualified and licensed contractors.</p> <p>(See San Diego County Regional Airport Bonding Assistance Program).</p>	<p>Significant disparity and underutilization in City M/WBE construction prime contract participation African American and WBEs; (Study p. E-VII, Exhibit E-5); regression analysis based upon PUMS data indicates disparities are not likely explained by differences in capacity, especially at the subcontracting level. (Study p. 6-39).</p> <p>Bonding requirements are hindering ability of M/WBE contractors to bid successfully. (Study p. 7-21)</p>	<p><i>Pro: Provides enhanced access to prime contracts for SBE and M/WBE firms; strengthens ability to obtain bonds for SBE firms, while reducing risk of loss through technical assistance and financial management support.</i></p> <p><i>Con: Initial \$5 million investment in program may be problematic due to Greensboro budgetary concerns and private sources for funding may also be limited by recession.</i></p>

<b><u>Industry Specific Programs</u></b>	<b><u>MGT Recommendations</u></b>	<b><u>Additional Options</u></b>	<b><u>Relevant Findings / Justifications</u></b>	<b><u>Pros &amp; Cons</u></b>
<p>Construction (R/N-5)</p> <p><i>SBE Mentor – Protégé Program</i></p>		<p>Team up more established and successful construction firm mentors with less established SBE firms to provide management guidance and training. May provide additional incentive to potential mentors by reserving some contracts for pre-approved mentor-protégé teams. (See City of Columbia, SC mentor-protégé program; see also Port of Portland Emerging Small Business Program). Also consider other incentives such as accelerated payment, access to working capital fund, and direct purchasing of supplies by City on behalf of mentor-protégé teams.</p>	<p>Relationship-building is a key component to opening up subcontract opportunities for emerging SBE firms that are not known to prime contractor community. Helps break down barriers inherent in good old boy networks. (p. 7-16, and pp. 7-22 to 7-24) Also, training in such matters as safety programs, payroll, estimating and bidding, management of funds and project management is extraordinarily valuable to newer firms. Mentors benefit from expanded pool of competent subs that are dependable and work well with prime.</p>	<p><i>Pro: This approach to building capacity is favored by the AGC and may provide a win-win scenario if a long-term prime – sub relationship evolves; mentor will have greater confidence in SBE subs that they have mentored.</i></p> <p><i>Con: There may not be enough mentors to meet needs of SBE subs; incentive for participation as mentor may not be sufficient as some primes perceive protégés to be potential competitors. There is also a need to have safeguards to ensure that protégé is not becoming a captive.</i></p>



<b><u>Industry Specific Programs</u></b>	<b><u>MGT Recommendations</u></b>	<b><u>Additional Options</u></b>	<b><u>Relevant Findings / Justifications</u></b>	<b><u>Pros &amp; Cons</u></b>
<p>Construction (R/N-6)</p> <p><i>SBE Low Cost Wrap-up Insurance (OCIP)</i></p>		<p>City negotiates with insurance carriers for construction services firms to provide policy to City that covers its SBE construction firms. SBE firms then deduct from their bids that portion that would have been included to cover the cost of insurance premiums.</p>	<p>Levels the playing field as all SBEs pay the same or less than non-SBE firms for workman's comp insurance, general liability, etc. (See San Diego, CA Minor Construction Program).</p> <p>Bonding and insurance requirements are hindering ability of M/WBE contractors to bid successfully. (Study p. 7-21)</p>	<p><i>Pro: Makes SBE construction firms more cost-competitive with larger firms.</i></p> <p><i>Con: May be difficult to find a carrier willing to write policy that covers firms with less experience and less track record. Rate that City pays may be higher than some of larger construction firms. In addition, legality of Owner Controlled Insurance Programs varies by state-to-state and must be investigated.</i></p>

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<p>Construction (R/N-7)</p> <p><i>Construction Direct Purchasing</i></p>		<p>City purchases all construction supplies and materials directly, thereby reducing amount of bond required from contractors for projects, and also reducing supplier costs and leveling playing field for M/WBE bidders that tend to be small and unable to get volume discounts on supplies that larger contractors get. (Study pp. 7-15, 7-21, and 8-7 to 8-9).  <b>[This approach is best suited on fairly routine projects where there are only one or two supplies and materials that have to be purchased, and the quantity is easily warehoused and promptly deliverable to the jobsite when needed.]</b></p>	<p>Significant disparity and underutilization in City construction prime contract participation for African American and women M/WBEs; (Study p. E-Vii, Exhibit E-5, p. 6-39).</p> <p>Bonding requirements are hindering ability of M/WBE contractors to bid successfully. (Study p. 7-21)</p>	<p><i>Pro: Provides enhanced access to prime contracts for SBE and M/WBE firms; strengthens ability to obtain bonds for SBE firms, while reducing risk of financial failure by shifting financial burden of supplier payments to City. Also may result in lower prices for supplies and materials.</i></p> <p><i>Con: Requires more administrative resources by City to insure that supplies are ordered, purchased, and delivered in a timely fashion.</i></p>

<b><u>Industry Specific Programs</u></b>	<b><u>MGT Recommendations</u></b>	<b><u>Additional Options</u></b>	<b><u>Relevant Findings / Justifications</u></b>	<b><u>Pros &amp; Cons</u></b>
Professional Services (R/N-8)  <i>SBE Vendor Rotation</i>	Selective use of vendor rotation of pre-qualified panel of SBE Professional Services firms for smaller City contracts valued at less than \$30,000. Work tasks are rotated among this pre-qualified panel of SBE Professional Services firms. (Study Recommendations E-1 and E-2)	FML concurs.	Significant underutilization of M/WBE firms (with exception of Asian Americans) in Professional Services prime contracts; (Study p. E-VII, Exhibit E-5)	<i>Pro: Automated centralized bidder registration system combined with pre-qualification process will enable rotation of SBE firms to get a fair chance to prove capabilities on smaller projects and overcome bias against unknown firms. Facilitates building a track record and overcoming lack of City experience barrier.</i>  <i>Con: Reduces competition in the short-run and may adversely affect cost.</i>

<b><u>Industry Specific Programs</u></b>	<b><u>MGT Recommendations</u></b>	<b><u>Additional Options</u></b>	<b><u>Relevant Findings / Justifications</u></b>	<b><u>Pros &amp; Cons</u></b>
<p>Professional Services (R/N-9)</p> <p><i>Evaluation Preference for New SBE Prime Bidders</i></p>	<p>Provide preferences for first time entrants seeking professional services contracts. (Study Recommendation 8-5)</p>	<p>Evaluation point preferences (award up to 20% of available evaluation points) to SBE firms bidding as first-time Professional Services prime consultants. Once SBE Professional Services firm is awarded a contract on this basis, they are no longer eligible for such evaluation preferences in the future.</p>	<p>Significant underutilization of M/WBE firms (with exception of Asian Americans) in Professional Services prime contracts; (Study p. E-VII, Exhibit E-5)</p>	<p><i>Pro: Encourages more natural evolution of successful SBE M/WBE Professional Services sub-consultant firms into full-service Professional Services firms that bid as primes. Helps overcome natural bias in favor of incumbent firms that repeatedly perform Professional Services prime contracts for City.</i></p> <p><i>Con: SBA size standards for SBEs may not be workable for Professional Services firms, which typically may have fewer employees.</i></p>

<u>Industry Specific Programs</u>	<u>MGT Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros &amp; Cons</u>
Professional Services (R/N-10)  <i>Evaluation Panel Diversity</i>		Assign a voting representative of the M/WBE Office to each evaluation panel for Professional Services contracts.	Disparity in award of prime Professional Services for all M/WBE groups except Asian Americans. (Study p. E-VII, Exhibit E-5) M/WBE firms cite favoritism and inherent bias in favor of large incumbent firms as a barrier to getting contracts. (Study p. 7-16, pp. 7-22 to 7-24)	<i>Pro: Utilization of M/WBE subcontractors with disparity as prime consultants suggests bias against SBE and / or M/WBE primes that might be ameliorated with addition of diverse point of view.</i>  <i>Con: A single evaluation panel representative with sensitivity towards the capabilities of SBE firms might not be sufficient to make a difference in overcoming advantages of incumbent firms; other panel members might resent panel representatives with no prior selection experience.</i>

<u>Industry Specific Programs</u>	<u>MGT Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros &amp; Cons</u>
<p>Professional Services (R/N-11)</p> <p><i>SBE Reserve Contracts (up to \$29,999.99 in value)</i></p>		<p>Reserve some smaller professional services contracts valued at less than \$30,000 for competition among SBE professional services firms.</p>	<p>Disparity in award of prime Professional Services for all M/WBE groups except Asian Americans. (Study p. E-VII, Exhibit E-5) M/WBE firms cite favoritism and inherent bias in favor of large incumbent firms as a barrier to getting contracts. (Study p. 7-16, pp. 7-22 to 7-24)</p>	<p><i>Pro: Encourages more natural evolution of SBE professional services firms into full-service professional services firms that bid as primes. Helps overcome natural bias in favor of incumbent firms that repeatedly perform professional services contracts for City.</i></p> <p><i>Con: SBA size standards for SBEs may not be workable for professional services firms, which typically may have fewer employees; reduces competition.</i></p>

<b><u>Industry Specific Programs</u></b>	<b><u>MGT Recommendations</u></b>	<b><u>Additional Options</u></b>	<b><u>Relevant Findings / Justifications</u></b>	<b><u>Pros &amp; Cons</u></b>
<p>Professional Services (R/N-12)</p> <p><i>Evaluation Preference for SBE Prime Bidders</i></p>	.	<p>Evaluation point preferences (award up to 20% of available evaluation points) to any SBE firms bidding as professional services prime consultants on contracts valued at less than \$500,000. Possible alternative is to restrict this program to professional services SBE prime consultant bidders that have not previously won a professional services prime contract with the City. (Compare with R/N-9 above)</p>	<p>Significant underutilization of M/WBE firms (with exception of Asian Americans) in Professional Services prime contracts; (Study p. E-VII, Exhibit E-5)</p>	<p><i>Pro: Encourages more natural evolution of successful M/WBE Professional Services sub-consultant firms into full-service Professional Services firms that bid as primes. Helps overcome natural bias in favor of incumbent firms that repeatedly perform Professional Services prime contracts for City.</i></p> <p><i>Con: SBA size standards for SBEs may not be workable for Professional Services firms, which typically may have fewer employees.</i></p>

<b><u>Industry Specific Programs</u></b>	<b><u>MGT Recommendations</u></b>	<b><u>Additional Options</u></b>	<b><u>Relevant Findings / Justifications</u></b>	<b><u>Pros &amp; Cons</u></b>
<p>Professional Services (R/N-13)</p> <p><i>Evaluation Panel Diversity</i></p>	<p>Assign a voting representative of the M/WBE Office to each evaluation panel for A&amp;E contracts. (Study Vol. 3, p. 8-11)</p>	<p>FML concurs.</p>	<p>Significant underutilization of MBE firms in professional services prime contracts; (Study Vol. 3, p. 8-4)</p> <p>Some evidence of stereotypical attitudes against M/WBE professional services firms. (Study Vol. 3, p. 2-4 to 2-7)</p>	<p><i>Pro: A representative with sensitivity towards capabilities of SBEs could help to counter the inherent bias in favor of larger incumbent firms.</i></p> <p><i>Con: A single evaluation panel representative with sensitivity towards the capabilities of SBE firms might not be sufficient to make a difference in overcoming advantages of incumbent firms; other panel members might resent representatives with no professional services selection experience.</i></p>



<b><u>Industry Specific Programs</u></b>	<b><u>MGT Recommendations</u></b>	<b><u>Additional Options</u></b>	<b><u>Relevant Findings / Justifications</u></b>	<b><u>Pros &amp; Cons</u></b>
<p>Other Services (R/N-14)</p> <p><i>SBE Vendor Rotations</i></p>		<p>Selective use of vendor rotation of pre-qualified panel of SBE non-professional services firms for smaller City contracts valued at less than \$30,000. All three quotes or proposals for these small contracts shall be solicited from SBEs.</p>	<p>Significant underutilization of African American, Hispanic American, and Women firms in non-professional services prime contracts. Native American non-professional services firms are also underutilized, but not significantly. Asian American firms' utilization exceeded their availability in this category on City contracts. (Study p. E-VII, Exhibit E-5)</p>	<p><i>Pro: Rotation of pre-qualified firms insures expansion of supplier base for routine matters of smaller size.</i></p> <p><i>Con: Pre-qualification process must be carefully managed to avoid favoritism and assignments to firms that are ill-suited for the needs of a particular contract. Routine matters are best suited for this option.</i></p>

<b><u>Industry Specific Programs</u></b>	<b><u>MGT Recommendations</u></b>	<b><u>Additional Options</u></b>	<b><u>Relevant Findings / Justifications</u></b>	<b><u>Pros &amp; Cons</u></b>
<p>Other Services (R/N-15)</p> <p><i>SBE Evaluation Preference for Prime Bidders</i></p>		<p>Where RFP process is used to select non-professional services firm, evaluation point preferences (award up to 20% of available evaluation points) are granted to SBE firms bidding as prime.</p>	<p>Significant underutilization of African American, Hispanic American, and Women firms in non-professional services prime contracts. Native American non-professional services firms are also underutilized, but not significantly. Asian American firms' utilization exceeded their availability in this category on City contracts. (Study p. E-VII, Exhibit E-5)</p>	<p><i>Pro: Helps overcome inherent bias against small non-incumbent firms.</i></p> <p><i>Con: Many non-professional services contracts may not be awarded pursuant to an evaluation panel process.</i></p>

<u>Industry Specific Programs</u>	<u>MGT Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros &amp; Cons</u>
<p>Goods (R/N-16)</p> <p><i>SBE Vendor Rotation</i></p>		<p>Selective use of vendor rotation of pre-qualified panel of SBE supplier firms for smaller City goods contracts valued at less than \$30,000. All three quotes or proposals for these small goods contracts shall be solicited from SBEs.</p>	<p>Significant underutilization of African American, Hispanic American, and Women firms in goods and services prime contracts. Native American Goods and Services firms are also underutilized, but not significantly. Asian American firms' utilization exceeded their availability in this category on City contracts. (Study p. E-VII, Exhibit E-5)</p>	<p><i>Pro: As goods contracts often do not provide commercially useful subcontract opportunities, rotation of approved small vendors to bid on smaller contracts is most cost-effective means for expanding supplier base and enhancing SBE and M/WBE participation.</i></p> <p><i>Con: City may not always obtain most competitive price. Careful identification of routine types of supply contracts where there is ample availability of qualified SBE suppliers is required under this option.</i></p>

**TABLE I-B: RACE / GENDER-CONSCIOUS POLICY OPTIONS FOR CITY OF GREENSBORO S/M/WBE PROGRAM**

(Prepared by Franklin M. Lee, Esquire 3-6-13)

<b><u>Industry Specific Programs</u></b>	<b><u>MGT Recommendations</u></b>	<b><u>Additional Options</u></b>	<b><u>Relevant Findings / Justifications</u></b>	<b><u>Pros &amp; Cons</u></b>
<p>Construction (R/C-1)</p> <p><i>Annual M/WBE Aspirational Goals</i></p>	<p>Establishment of annual aspirational goals for M/WBE participation in City construction contracts (base goals starting at 7% MBE and 7% WBE for construction prime contract dollars, and 8% MBE and 7% WBE for subcontract dollars awarded, with some upward adjustment as warranted). These goals are not to be necessarily applied to individual contracts, but rather serve as a guidepost to evaluate the effectiveness of the SBE and M/WBE programs and to make adjustments as necessary to the mix</p>	<p>FML concurs.</p>	<p>Flexible benchmarks are important to managing the M/WBE program and finding the appropriate mix of race- and gender-neutral and race- and gender-conscious policies. Annual goals also provide an up-to-date measure of availability by overall industry categories, and can be useful for outreach purposes.</p>	<p><i>Pro: Provides a useful tool for evaluating success of program and making necessary adjustments to aggressiveness of remedies and outreach efforts.</i></p> <p><i>Con: Must guard against reflex to apply annual goals to specific projects without justification. If not updated periodically, can also provide another avenue of legal attack against the program on narrow tailoring grounds.</i></p>

<i>Construction (R/C-1)</i>  <i>Annual M/WBE Aspirational Goals (continued)</i>	and aggressiveness of policy options.  (See Study p. E-IX, Exhibit E-6, and Recommendation E-6)			
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<b><u>Industry Specific Programs</u></b>	<b><u>MGT Recommendations</u></b>	<b><u>Additional Options</u></b>	<b><u>Relevant Findings / Justifications</u></b>	<b><u>Pros &amp; Cons</u></b>
<p>Construction (R/C-2)</p> <p><i>M/WBE Joint Venture Incentives</i></p> <p><i>(Contracts ≥ \$10 million w/ optional threshold of \$1 million or more)</i></p>	<p>Establish joint venture policy similar to City of Atlanta's which requires establishment of joint ventures between diverse partners on projects that exceed \$10 million in value. (Study p. 8-11)</p>	<p>As few construction projects may exceed \$10 million, reserve some larger prime contracts valued at \$1 million or greater for competition by joint ventures between non-M/WBE firms and M/WBE firms. Consideration of this option should be limited to occasions when the City has several M/WBE prime contractors of sufficient size and capacity to meaningfully joint venture on contracts of this magnitude. Alternatively, dollar threshold for contracts for application of this remedy may need to be adjusted. Also consider providing incentives for larger M/WBEs to joint venture with smaller local M/WBEs to build local capacity.</p>	<p>Significant disparity and underutilization in City M/WBE construction prime contract participation for African American firms and WBEs; (Study p. E-VII, Exhibit E-5); regression analysis based upon PUMS data indicates disparities are not likely explained by differences in capacity, especially at the subcontracting level. (Study p. 6-39).</p>	<p><i>Pro: Provides a strong incentive for collaboration across lines of race and gender in bidding on larger construction contracts; enhances opportunities for M/WBEs to gain project management and prime contract experience on larger projects.</i></p> <p><i>Con: Requires careful monitoring of role of M/WBE in contract to insure legitimate share of project management and contribution to joint venture scope of work; not certain if there are sufficient numbers of M/WBE primes of significant size and capacity to match up with other non-M/WBE bidders.</i></p>

<b><u>Industry Specific Programs</u></b>	<b><u>MGT Recommendations</u></b>	<b><u>Additional Options</u></b>	<b><u>Relevant Findings / Justifications</u></b>	<b><u>Pros &amp; Cons</u></b>
<p>Construction (R/C-3)</p> <p><i>M/WBE Weighted Contract-Specific Subcontracting Goals</i></p>	<p>Mandatory submission of M/WBE subcontracting plans by prime contractors bidding on City construction contracts. Good faith efforts to solicit M/WBE subcontractors to satisfy contract-specific goals weighted to availability of M/WBE firms in required sub-specialties; this provision should apply to both M/WBE prime bidders and non-M/WBE bidders. Project-specific goals should vary by project and be based upon realistic measurement of available M/WBE firms for the particular project. Documented excessive prices or poor performance by M/WBE subcontractors is basis for exclusion from bid.</p>	<p>FML concurs with suggestion, and suggests that a Goal Setting Committee be formed to undertake analysis to set subcontracting goals on a project-specific basis. Hispanic American subcontractors should be excluded from this program due to lack of disparity, and goal setting mechanism should take this into account by excluding the availability of Hispanic American firms from the calculation of M/WBE subcontract goals. (Study p. E-I, Exhibit E-3, p. E-IV)</p>	<p>MGT Study concludes there is significant disparity in subcontract utilization of M/WBEs in City contracts (with exception of Hispanic American subcontractors) and very low M/WBE utilization in private sector construction contracts, even after controlling for capacity and other race-neutral variables. There was also testimony indicating that M/WBE firms have been not had an equal opportunity to bid and receive construction subcontracts in absence of MBE program and in private sector. (Study pp. E-1, Exhibit E-3, p. E-IV, p. 8-6 to 8-7, Finding E-3, p. E-VIII, pp. 6-1 to 6-16, and p. 6-25.)</p>	<p><i>Pro: Provides narrowly tailored approach to setting realistic M/WBE subcontract goals; built-in flexibility with consideration of good faith efforts documentation; follows federal government model for DBE program which is legally defensible.</i></p> <p><i>Con: Is more administratively burdensome to implement; requires careful consideration in goal-setting stage for each and every project.</i></p>

<b><u>Industry Specific Programs</u></b>	<b><u>MGT Recommendations</u></b>	<b><u>Additional Options</u></b>	<b><u>Relevant Findings / Justifications</u></b>	<b><u>Pros &amp; Cons</u></b>
<p>Construction (R/C-4)</p> <p><i>M/WBE Mentor-Protégé Program</i></p>		<p>Team up more established and successful construction firm mentors with less established M/WBE firms to provide management guidance and training. May provide additional incentive to potential mentors by reserving some contracts for pre-approved mentor-protégé teams. (See City of Columbia, SC mentor-protégé program; see also Port of Portland Emerging Small Business Program). Also consider other incentives such as accelerated payment, access to working capital fund, and direct purchasing of supplies by City on behalf of mentor-protégé teams.</p>	<p>In the event the SBE program version of the mentor-protégé program (see R/N-5) is unable to recruit enough mentors, then this M/WBE Mentor Protégé Program should be implemented. It is presumed that there will be more certified SBE construction firms than M/WBE firms.</p>	<p><i>Pro: This approach to building capacity is favored by the AGC and may provide a win-win scenario if a long-term prime – sub relationship evolves; mentor will have greater confidence in M/WBE subs that they have mentored.</i></p> <p><i>Con: Incentive for participation as mentor may not be sufficient as some primes perceive protégés to be potential competitors. There is also a need to have safeguards to ensure that protégé is not becoming a captive, and maintains management and control of its firm.</i></p>



<b><u>Industry Specific Programs</u></b>	<b><u>MGT Recommendations</u></b>	<b><u>Additional Options</u></b>	<b><u>Relevant Findings / Justifications</u></b>	<b><u>Pros &amp; Cons</u></b>
<p>Construction (R/C-5)</p> <p><i>Minority Inclusion Language in RFPs</i></p>	<p>In construction projects that are “best value” contracts such as with construction manager or design-build delivery methods where selection is through an RFP process instead of lowest responsible bidder IFBs, include language in RFP to encourage M/WBE participation on bidder’s team as one element in selection criteria. (Study p. 8-16, Recommendation 8-13)</p>	<p>FML concurs. An additional element in selection criteria may be past performance in achieving diversity in subcontract awards on similar projects.</p>	<p>Significant disparity and underutilization in City M/WBE construction prime contract participation for African American firms and WBEs; (Study p. E-VII, Exhibit E-5); regression analysis based upon PUMS data indicates disparities are not likely explained by differences in capacity, especially at the subcontracting level. (Study p. 6-39).</p>	<p><i>Pro: Provides a strong incentive for collaboration across lines of race and gender in bidding on larger construction “best value” contracts where price is not the only consideration; enhances opportunities for M/WBEs to gain project management and prime contract experience on larger projects.</i></p> <p><i>Con: Requires careful monitoring of role of M/WBE in contract to insure legitimate share of project management and contribution to team’s scope of work;</i></p>

<u>Industry Specific Programs</u>	<u>MGT Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros &amp; Cons</u>
<p>Construction (R/C-6)</p> <p><i>Evaluation Preference for “Best Value” RFPs</i></p>	<p>In construction projects that are “best value” contracts such as with construction manager or design-build delivery methods where selection is through an RFP process instead of lowest responsible bidder IFBs, include language in RFP to encourage M/WBE participation on bidder’s team as one element in selection criteria. (Study p. 8-16, Recommendation 8-13)</p>	<p>This option assigns evaluation point preferences (awarding up to 20% of total available evaluation points on a sliding scale basis based upon the level of M/WBE participation) to any firms bidding on construction management or prime construction design-build contracts. Evaluation preference points are assigned to team based upon the percentage dollar value of the contract that will be performed by team members that are M/WBE firms. (Compare with R/C-5 above)</p>	<p>Significant disparity and underutilization in City M/WBE construction prime contract participation for African American firms and WBEs; (Study p. E-VII, Exhibit E-5); regression analysis based upon PUMS data indicates disparities are not likely explained by differences in capacity, especially at the subcontracting level. (Study p. 6-39).</p>	<p><i>Pro: Provides a strong incentive for collaboration across lines of race and gender in bidding on larger construction “best value” contracts where price is not the only consideration; the greater the level of M/WBE participation, the greater the evaluation preference for the bidder.</i></p> <p><i>Con: Requires careful monitoring of role of M/WBE in contract to insure legitimate share of project management and contribution to team’s scope of work.</i></p>

<b><u>Industry Specific Programs</u></b>	<b><u>MGT Recommendations</u></b>	<b><u>Additional Options</u></b>	<b><u>Relevant Findings / Justifications</u></b>	<b><u>Pros &amp; Cons</u></b>
<p>Construction (R/C-7)</p> <p><i>Economic Development Project M/WBE Subcontracting Goals</i></p>	<p>For private sector economic development projects where the City is providing some land, tax incentive, infrastructure improvements, or other value to the overall project, the City may require the developer to apply mandatory M/WBE subcontract participation goals to the construction portion of the project. (Study p. 8-16, Recommendation 8-14)</p>	<p>FML concurs. (See City of Baltimore M/WBE Program Ordinance)</p>	<p>Based upon building permit data, the City is likely a passive participant in private sector discrimination against M/WBE subcontractors. Twenty-three prime contractors that the City has contracted with have negligible, if any, M/WBE subcontract participation on their private commercial construction projects, even though they collectively have routinely used as many as 73 M/WBE subcontractors on City projects when required by law. (Study p. E-VIII, pp. 8-6 to 8-7, Finding E-3, pp. 6-1 to 6-16, pp. 6-26 to 6-39, and p. 8-14)</p>	<p><i>Pro: This policy option is necessary for the City to avoid becoming a passive participant in private sector discrimination in the construction industry. It also assists M/WBEs in building their capacity outside of City construction contracts (that typically have thinner profit margins than private contracts).</i></p> <p><i>Con: Administratively, it is more difficult to monitor compliance with M/WBE subcontract goals on private projects where City inspectors are not routinely stationed.</i></p>

<b><u>Industry Specific Programs</u></b>	<b><u>MGT Recommendations</u></b>	<b><u>Additional Options</u></b>	<b><u>Relevant Findings / Justifications</u></b>	<b><u>Pros &amp; Cons</u></b>
<p>Professional Services (R/C-8)</p> <p><i>Annual Aspirational M/WBE Goals</i></p>	<p>Establishment of annual aspirational goals for M/WBE participation in City Professional Services contracts (beginning with base goals of 6% for MBE prime contracts dollars awarded and 5% for WBE subcontract dollars awarded with some upward adjustments as warranted). This annual goal is not to be necessarily applied to individual contracts, but rather serves as a guidepost to evaluate the effectiveness of the M/WBE programs and to make adjustments as necessary to the mix and aggressiveness of policy options.</p> <p>(See Study p. E-IX, Exhibit E-6, and Recommendation E-6)</p>	<p>FML concurs.</p>	<p>Flexible benchmarks are important to managing the M/WBE program and finding the appropriate mix of race- and gender-neutral and race- and gender-conscious policies. Annual goals also provide an up-to-date measure of availability by overall industry categories, and can be useful for outreach purposes.</p>	<p><i>Pro: Provides a useful tool for evaluating success of program and making necessary adjustments to aggressiveness of remedies and outreach efforts.</i></p> <p><i>Con: Must guard against reflex to apply annual goals to specific projects without justification. If not updated periodically, can also provide another avenue of legal attack against the program on narrow tailoring grounds.</i></p>

<b><u>Industry Specific Programs</u></b>	<b><u>MGT Recommendations</u></b>	<b><u>Additional Options</u></b>	<b><u>Relevant Findings / Justifications</u></b>	<b><u>Pros &amp; Cons</u></b>
<p>Professional Services (R/C-9)</p> <p><i>M/WBE Vendor Rotation</i></p>	<p>Selective use of vendor rotation of pre-qualified panel of M/WBE Professional Services firms for smaller City contracts valued at less than \$30,000. Work tasks are rotated among this pre-qualified panel of M/WBE Professional Services firms. (Study Recommendations E-1)</p>	<p>Selective use of vendor rotation of pre-qualified panel of M/WBE Professional Services firms (with the exception of Asian American firms) for smaller City design projects valued at less than \$30,000. Two out of three quotes or proposals for these small contracts shall be solicited from M/WBEs.</p>	<p>Significant underutilization of M/WBE firms in Professional Services prime contracts (with the exception of Asian American firms, which were unavailable); (Study p. E-VII, Exhibit E-5)</p>	<p><i>Pro: Automated centralized bidder registration system combined with pre-qualification process will enable rotation of M/WBE firms to get a fair chance to prove capabilities on smaller projects and overcome bias against unknown firms. Facilitates building a track record to overcome City experience barrier.</i></p> <p><i>Con: Reduces competition in the short-run and may adversely affect cost</i></p>

<b><u>Industry Specific Programs</u></b>	<b><u>MGT Recommendations</u></b>	<b><u>Additional Options</u></b>	<b><u>Relevant Findings / Justifications</u></b>	<b><u>Pros &amp; Cons</u></b>
<p>Professional Services (R/C-10)</p> <p><i>M/WBE Evaluation Preference for Prime Bidders</i></p>	<p>In Professional Services contracts where selection is through an RFP process instead of lowest responsible bidder IFBs, include language in RFP to encourage M/WBE participation on bidder's team as one element in selection criteria. (Study p. 8-16, Recommendation 8-13)</p>	<p>This option assigns evaluation point preferences (awarding up to 20% of total available evaluation points on a sliding scale basis based upon the level of M/WBE participation) to any firms bidding on Professional Services contracts. Evaluation preference points are assigned to team based upon the percentage dollar value of the contract that will be performed by team members that are M/WBE firms. (Compare with R/C-5 above)</p>	<p>Significant underutilization of M/WBE firms in Professional Services prime contracts (with the exception of Asian American firms, which were unavailable); (Study p. E-VII, Exhibit E-5)</p>	<p><i>Pro: Encourages more natural evolution of successful M/WBE Professional Services sub-consultant firms into full-service Professional Services firms that bid as primes. Helps overcome natural bias in favor of incumbent firms that repeatedly perform Professional Services prime contracts for City.</i></p> <p><i>Con: Requires careful compliance monitoring by City to ensure that M/WBE team members get to perform agreed upon scope of work at agreed upon dollar value.</i></p>

<b><u>Industry Specific Programs</u></b>	<b><u>MGT Recommendations</u></b>	<b><u>Additional Options</u></b>	<b><u>Relevant Findings / Justifications</u></b>	<b><u>Pros &amp; Cons</u></b>
<p>Other Services (R/C-11)</p> <p><i>Annual M/WBE Aspirational Goals</i></p>	<p>Establishment of annual aspirational goals for M/WBE participation in City Other Services contracts (beginning with base goals of 5% for MBE contracts dollars awarded and 3% for WBE contract dollars awarded with some upward adjustment as warranted). This annual goal is not to be necessarily applied to individual contracts, but rather serves as a guidepost to evaluate the effectiveness of the M/WBE programs and to make adjustments as necessary to the mix and aggressiveness of policy options.</p> <p>(See Study p. E-IX, Exhibit E-6, and Recommendation E-6)</p>	<p>FML concurs.</p>	<p>Flexible benchmarks are important to managing the M/WBE program and finding the appropriate mix of race- and gender-neutral and race- and gender-conscious policies. Annual goals also provide an up-to-date measure of availability by overall industry categories, and can be useful for outreach purposes.</p>	<p><i>Pro: Provides a useful tool for evaluating success of program and making necessary adjustments to aggressiveness of remedies and outreach efforts.</i></p> <p><i>Con: Must guard against reflex to apply annual goals to specific projects without justification. If not updated periodically, can also provide another avenue of legal attack against the program on narrow tailoring grounds.</i></p>

<b><u>Industry Specific Programs</u></b>	<b><u>MGT Recommendations</u></b>	<b><u>Additional Options</u></b>	<b><u>Relevant Findings / Justifications</u></b>	<b><u>Pros &amp; Cons</u></b>
<p>Other Services (R/C-12)</p> <p><i>M/WBE Vendor Rotation</i></p>	<p>Selective use of vendor rotation of pre-qualified panel of M/WBE Other Services firms for smaller City contracts valued at less than \$30,000. Work tasks are rotated among this pre-qualified panel of M/WBE Other Services firms. (Study p. 8-2, Recommendation E-1)</p>	<p>Selective use of vendor rotation of pre-qualified panel of M/WBE Other Services firms for smaller City projects valued at less than \$30,000. Two out of three quotes or proposals for these small contracts shall be solicited from M/WBEs.</p>	<p>Significant underutilization of African American, Hispanic American, and Women firms in non-professional services prime contracts. Native American non-professional services firms are also underutilized, but not significantly. Asian American firms' utilization exceeded their availability in this category on City contracts. (Study p. E-VII, Exhibit E-5)</p>	<p><i>Pro: Automated centralized bidder registration system will enable rotation of M/WBE firms to get a fair chance to prove capabilities on smaller projects and overcome bias against unknown firms. Facilitates building a track record to overcome City experience barrier.</i></p> <p><i>Con: Reduces competition in the short-run and may adversely affect cost</i></p>



<b><u>Industry Specific Programs</u></b>	<b><u>MGT Recommendations</u></b>	<b><u>Additional Options</u></b>	<b><u>Relevant Findings / Justifications</u></b>	<b><u>Pros &amp; Cons</u></b>
<p>Other Services (R/C-13)</p> <p><i>M/WBE Evaluation Preference for Prime Bidders</i></p>	<p>In Other Services contracts where selection is through an RFP process instead of lowest responsible bidder IFBs, include language in RFP to encourage M/WBE participation on bidder's team as one element in selection criteria. (Study p. 8-16, Recommendation 8-13)</p>	<p>This option assigns evaluation point preferences (awarding up to 20% of total available evaluation points on a sliding scale basis based upon the level of M/WBE participation) to any firms bidding on Other Services contracts. Evaluation preference points are assigned to team based upon the percentage dollar value of the contract that will be performed by team members that are M/WBE firms. (Compare with R/N-15 above)</p>	<p>Significant underutilization of African American, Hispanic American, and Women firms in non-professional services prime contracts. Native American non-professional services firms are also underutilized, but not significantly. Asian American firms' utilization exceeded their availability in this category on City contracts. (Study p. E-VII, Exhibit E-5) Good old boy networks lock out many M/WBE firms. (Study p. 7-16, pp. 7-22 to 7-24, and p. 7-26)</p>	<p><i>Pro: Helps overcome inherent bias against small non-incumbent firms.</i></p> <p><i>Con: Many non-professional services contracts may not be awarded pursuant to an evaluation panel process.</i></p>

<b><u>Industry Specific Programs</u></b>	<b><u>MGT Recommendations</u></b>	<b><u>Additional Options</u></b>	<b><u>Relevant Findings / Justifications</u></b>	<b><u>Pros &amp; Cons</u></b>
<p>Goods (R/C-14)</p> <p><i>Annual M/WBE Aspirational Goals</i></p>	<p>Establishment of annual aspirational goals for M/WBE participation in City Goods contracts (beginning with base goals of 5% for MBE contract dollars awarded and 3% for WBE contract dollars awarded with some upward adjustment as warranted). This annual goal is not to be necessarily applied to individual contracts, but rather serves as a guidepost to evaluate the effectiveness of the M/WBE programs and to make adjustments as necessary to the mix and aggressiveness of policy options.</p> <p>(See Study p. E-IX, Exhibit E-6, and Recommendation E-6)</p>	<p>FML concurs.</p>	<p>Flexible benchmarks are important to managing the M/WBE program and finding the appropriate mix of race- and gender-neutral and race- and gender-conscious policies. Annual goals also provide an up-to-date measure of availability by overall industry categories, and can be useful for outreach purposes.</p>	<p><i>Pro: Provides a useful tool for evaluating success of program and making necessary adjustments to aggressiveness of remedies and outreach efforts.</i></p> <p><i>Con: Must guard against reflex to apply annual goals to specific projects without justification. If not updated periodically, can also provide another avenue of legal attack against the program on narrow tailoring grounds.</i></p>

<b><u>Industry Specific Programs</u></b>	<b><u>MGT Recommendations</u></b>	<b><u>Additional Options</u></b>	<b><u>Relevant Findings / Justifications</u></b>	<b><u>Pros &amp; Cons</u></b>
<p>Goods (R/C-15)</p> <p><i>M/WBE Vendor Rotations</i></p>	<p>Selective use of vendor rotation of pre-qualified panel of M/WBE suppliers for smaller City contracts for purchases of Goods valued at less than \$30,000. Purchase Orders are rotated among this pre-qualified panel of M/WBE Goods firms. (Study p. 8-2, Recommendation E-1)</p>	<p>Selective use of vendor rotation of pre-qualified panel of M/WBE suppliers of Goods for smaller City contracts valued at less than \$30,000. Alternatively, two out of three quotes or proposals for these small Goods purchases shall be solicited from M/WBEs.</p>	<p>Significant underutilization of African American, Hispanic American, Native American and Women firms in Goods procurement prime contracts. Utilization of Asian American Goods suppliers exceeded their availability.</p> <p>(Study p. E-VII, Exhibit E-5, and p. 8-2)</p>	<p><i>Pro: Rotation of pre-qualified firms insures expansion of supplier base for routine matters of smaller size.</i></p> <p><i>Con: Pre-qualification process must be carefully managed to avoid favoritism and assignments to firms that are ill-suited for the needs of a particular contract. Routine matters are best suited for this option.</i></p>

<b><u>Industry Specific Programs</u></b>	<b><u>MGT Recommendations</u></b>	<b><u>Additional Options</u></b>	<b><u>Relevant Findings / Justifications</u></b>	<b><u>Pros &amp; Cons</u></b>
<p>Goods (R/C-16)</p> <p><i>Voluntary M/WBE Distributorship Development Program</i></p>		<p>Where there is low availability of M/WBE authorized distributorships or dealerships for certain Goods, provide incentives to manufacturers of those Goods to voluntarily establish an authorized dealership or distributorship with at least one new M/WBE supplier on a non-discriminatory basis. Such incentives may include accelerated payment and extended option years on supply contracts.</p>	<p>Significant underutilization of African American, Hispanic American, Native American and Women firms in Goods procurement prime contracts. Utilization of Asian American Goods suppliers exceeded their availability.</p> <p>(Study p. E-VII, Exhibit E-5, and p. 8-2)</p>	<p><i>Pro: Addresses relatively low availability of M/WBE Goods suppliers and permits them to compete on an equal basis with other non-M/WBE suppliers.</i></p> <p><i>Con: Requires resources to carefully review and monitor M/WBE distributorship agreements to ensure M/WBE distributorships are treated equally as other distributorships issued by manufacturer in terms of advertising support, line of credit, geographic market, non-government accounts, etc.</i></p>

**TABLE II: NON-INDUSTRY-SPECIFIC POLICY OPTIONS FOR CITY OF GREENSBORO S/M/WBE PROGRAM**

(Prepared by Franklin M. Lee, Esquire 3-6-13)

<b><u>Procurement Reform &amp; Non-Industry-Specific Policy Options</u></b>	<b><u>MGT Recommendations</u></b>	<b><u>Additional Options</u></b>	<b><u>Relevant Findings / Justifications</u></b>	<b><u>Pros &amp; Cons</u></b>
<p>All Industries (R/N-17)</p> <p><i>Bid-Debriefings</i></p>	<p>Uniformly and affirmatively offer de-briefings to losing bidders. Where feasible, post winning bids and proposals on web site. (Study pp. 7-15 and 7-24)</p>	<p>FML concurs.</p>	<p>There is perception among some M/WBEs that they have not been treated fairly in bidding process; there is mystery about bid or proposal outcomes, adverse changes to bid specifications, and rejection of low M/WBE bids. (See Study pp. 7-15, 7-16, and 7-21 to 7-23.)</p>	<p><i>Pro: Takes bid scoring mystery away and provides guidance to firms about how to compete better on next bid; promotes defensible and consistent scoring by staff and careful consideration of scoring justification.</i></p> <p><i>Con: Could lead to increased bid protests.</i></p>

<u>Procurement Reform &amp; Non-Industry-Specific Policy Options</u>	<u>MGT Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros &amp; Cons</u>
<p>All Industries (R/N-18)</p> <p><i>Bid Specification Review</i></p>		<p>Goal Setting Committee should be established with representation from purchasing agency and M/WBE Office to preview and eliminate unnecessarily restrictive contract specifications in bids before they are issued; special consideration should be given to whether specifications have a disproportionately adverse impact on SBEs and M/WBEs.</p>	<p>Particularly in tough budgetary environments, there is a natural tendency to bundle smaller contracts into a smaller number of large contracts, which can have unintended consequences for ability of smaller firms and firms with less capacity to obtain requisite bonding and working capital to be able to bid. (Study p. 7-21, and pp. 8-7 to 8-9) In addition, overly burdensome experience requirements and insurance requirements can preclude non-incumbent firms and smaller firms from competing. (Study pp. 7-14 to 7-16)</p>	<p><i>Pro: Enhances competition and fairness in procurement process; promotes bidding by new entrants; impedes operation of “good ol’ boy” networks. (See Study pp. 7-16 and 7-22 to 7-24)</i></p> <p><i>Con: Requires additional resources for M/WBE Office to preview bid specs.</i></p>

<u>Procurement Reform &amp; Non-Industry-Specific Policy Options</u>	<u>MGT Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros &amp; Cons</u>
<p>All Industries (R/N-19)</p> <p><i>Commercial Non-discrimination Policy</i></p>	<p>City Commercial Anti-discrimination rules should require submission of subcontractor utilization reports by prime contractors, a mechanism whereby complaints may be filed against firms that have discriminated in the marketplace, due process in the form of an independent investigation by agency staff and a hearing process before an independent hearing examiner, an appeals process, and imposition of sanctions including debarment for up to 5 years, termination of contracts, and referrals for prosecution of fraud. (Study Recommendation 8-8; pp. 8-9 and 8-13)</p>	<p>FML concurs. Consent agreements among the parties may also be accepted as a means of resolving complaints, remedying past discrimination, and preventing its re-occurrence in the future.</p>	<p>Federal court decisions have favorably commented upon such policies as prerequisite or complement to race- and gender-conscious remedial relief. (See J. A. Croson v. City of Richmond, Northern Contracting v. Illinois DOT). There was also considerable evidence that City is a passive participant in private sector discrimination on the part of its prime construction contractors. (Study pp. E-VIII, Finding E-3, pp. 6-1 to 6-16, and 6-25, p. 8-14.)</p>	<p><i>Pro: Commercial non-discrimination policy approach is approved by Supreme Court; sets a positive standard for public and private marketplace to be inclusive of all business communities; provides incentive for contractors and vendors to consciously diversify supplier sources.</i></p> <p><i>Con: Requires some degree of administrative infrastructure to investigate complaints and to provide due process hearings.</i></p>

<u>Procurement Reform &amp; Non-Industry-Specific Policy Options</u>	<u>MGT Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros &amp; Cons</u>
<p>All Industries (R/N-20)</p> <p><i>Business Development Assistance</i></p>	<p>City should further enhance its business development assistance efforts, including referrals and collaborations with North Carolina A&amp;T, North Carolina State University, and the Small Business and Technology Development Center. Follow the example of Port Authority of New York and New Jersey for which management and technical assistance contracts have been structured to include incentives for producing results such as increasing the numbers of M/WBEs being registered and qualified vendors with the City, and the number of firms graduating from</p>	<p>FML concurs. City should conduct assessments of SBE firms and M/WBE firms' growth and objectively measure the effectiveness of various forms of technical assistance (e.g., number of bids submitted, number of winning bids, earnings growth, number of program graduations, etc.).</p>	<p>A number of M/WBE firms stated that they do not fully understand the City's procurement procedures, are unaware of upcoming bid opportunities, and have difficulty obtaining bonding and financing. (Study pp. 6-26 to 6-39, 7-19, 7-21, and 8-7 to 8-9)</p>	<p><i>Pro: Provides greater accountability regarding usefulness and effectiveness of technical assistance and business development resources; may promote greater diversity of supplier base for Consortium members.</i></p> <p><i>Con: Requires additional resources from M/WBE Office.</i></p>



<p>All Industries (R/N-20)</p> <p><i>Business Development Assistance</i> (continued)</p>	<p>subcontracting and becoming prime vendors or contractors. (Study Recommendation E-4, pp. E-IX and 8-12)</p>			
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<b><u>Procurement Reform &amp; Non-Industry-Specific Policy Options</u></b>	<b><u>MGT Recommendations</u></b>	<b><u>Additional Options</u></b>	<b><u>Relevant Findings / Justifications</u></b>	<b><u>Pros &amp; Cons</u></b>
<p>All Industries (R/N-21)</p> <p><i>S/M/WBE Program Data Management</i></p>	<p>City should modify its data management system to insure that it can closely monitor the actual payments to all prime and subcontractors by race, ethnicity, gender and industry. (Study pp. 7-24 and 8-16; Recommendation 8-15)</p> <p>Enhance City website for intake and display of SBE and M/WBE certifications, available loan programs, program data and reports, and procurement rules. (Study Recommendation 8-16, Study p. 8-16)</p>	<p>Further suggestion to make registration mandatory for all bidders and vendors; make modifications to automated centralized bidder registration system to enable targeted e-mail alerts and web site postings by prime contractors as good faith outreach solicitations to subcontractors based on commodity codes of registrants; use system to establish annual aspirational goals and project-specific goals based upon availability and the estimated weighted value of specific commodity codes used in the contract.</p>	<p>Enables narrow tailoring of project-specific goals based on best available current measure of firms that are ready, willing, and able to bid on City contracts; also provides transparency in contract awards and actual payments at prime contract and subcontract levels for all firms, not just M/WBEs.</p>	<p><i>Pro: Strengthens defensibility of disparity study and program goal-setting; reduces administrative burden in setting goals and tracking payments; facilitates enforcement of prompt payment provisions on behalf of subcontractors; facilitates focused outreach efforts; enhances competition; levels playing field for smaller firms' marketing efforts.</i></p> <p><i>Con: None.</i></p>

<u>Procurement Reform &amp; Non-Industry-Specific Policy Options</u>	<u>MGT Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros &amp; Cons</u>
<p>All Industries (R/N-22)</p> <p><i>Periodic Program Performance Review</i></p>	<p>City should add performance measures other than S/M/WBE percentage utilization to gauge the program's effectiveness (e.g., growth in number of S/M/WBE firms winning their first City contract award; growth rate in M/WBE firms utilization; growth in M/WBE prime contract participation; number of successful M/WBE program graduates still in business and still actively performing work for City; percentage of M/WBE dollars gained through open competitive bidding. (Study Recommendation 8-20)</p>	<p>FML concurs, and suggests that such performance measures should also include growth in M/WBE participation in private sector contracts. Reviews should be conducted on an annual basis, with policy adjustments to be considered at least every four years.</p>	<p>Increasingly, court decisions focus on serious good faith assessment of the effectiveness of race- and gender-neutral methods as a prerequisite to the continuation of race-conscious remedies; periodic assessment enables better program management and focus on least restrictive alternatives that are effective in eliminating disparities in the utilization of M/WBE firms.</p>	<p><i>Pro: Enhances legal defensibility of M/WBE program. Good management techniques lead to more effective program and eventual phasing out. Performance standards also serve to provide clearer rationale to the public regarding the purpose and benefits of the SBE and M/WBE programs.</i></p> <p><i>Con: None.</i></p>

<b><u>Procurement Reform &amp; Non-Industry-Specific Policy Options</u></b>	<b><u>MGT Recommendations</u></b>	<b><u>Additional Options</u></b>	<b><u>Relevant Findings / Justifications</u></b>	<b><u>Pros &amp; Cons</u></b>
<p>All Industries (R/N-23)</p> <p><i>Prompt Payment Notification (E-mail alerts)</i></p>	<p>City should enhance transparency and monitoring of prompt payment provisions. (Study Recommendation 8-19; Study p. 8-17)</p>	<p>City should use automated centralized bidder registration system to immediately send routine e-mail alerts to all subcontractors listed by prime contractor whenever a payment is issued to that prime. This will enhance transparency in the accounts payable process and permit subcontractors to avail themselves of prompt payment law remedies if they are not paid by primes in a timely fashion.</p>	<p>SBE and M/WBE firms often complain of slow payment and do not have equal access to working capital. (Study p. 7-21 and pp. 8-7 to 8-9.)</p>	<p><i>Pro: Provides transparency in payment process and also empowers subcontractors to protect their rights and to catch fraudulent reporting of subcontractor participation on City contracts.</i></p> <p><i>Con: None.</i></p>

<u>Procurement Reform &amp; Non-Industry-Specific Policy Options</u>	<u>MGT Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros &amp; Cons</u>
<p>All Industries (R/N-24)</p> <p><i>Contract De-Bundling</i></p>		<p>Goal Setting Committees should be formed to review each formal contract bid solicitation prior to issuance. As part of this review process, the Goal Setting Committee shall determine whether the contract is unnecessarily large and whether it might better be de-bundled into several smaller contracts to better enable small and M/WBE firms to compete.</p>	<p>Many small and M/WBE firms have difficulty in competing for larger contracts due to lack of access to capital and capacity issues. (Study p. 7-15 and p. 7-25)</p>	<p><i>Pro: Smaller contracts enhance competition and give smaller firms and M/WBE firms a better opportunity to win contracts.</i></p> <p><i>Con: De-Bundling contracts increases the number of contracts that have to be advertised, issued, and monitored by City staff. It is easier to administer and manage a single large contract versus several smaller ones. Sometimes, costs are adversely affected by de-bundling.</i></p>

<u>Procurement Reform &amp; Non-Industry-Specific Policy Options</u>	<u>MGT Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros &amp; Cons</u>
<p>All Industries (R/C-17)</p> <p><i>Linked Deposit Policy</i></p>		<p>Establish criteria for financial institutions to compete for City deposits and banking services on the basis of commercial lending practices and loan performance re: M/WBEs; revolving working capital fund for M/WBEs performing on City contracts.</p>	<p>MGT econometric analysis found disparities in loan denial rates to M/WBEs and interest rates for loans made to African- American owned businesses were considerably higher. African American-owned firms paid approximately 30 to 150 percent more in interest than non-African American owned firms. Such higher costs place M/WBEs at a competitive disadvantage. Higher loan denial rates reduce M/WBE capacity. Working capital fund could help level the playing field. (Study Finding 8-9, pp. 6-26 to 6-39, p. 7-21, and pp. 8-7 to 8-9)</p>	<p><i>Pro: By encouraging competition among financial institutions for City business, City may positively influence availability of capital for M/WBE firms without expenditure of funds. Higher interest rates resulting from discrimination can be offset through subsidized interest rates provided through this policy.</i></p> <p><i>Con: Possible inconvenience or disruption from change in banking relationship, forms, etc.</i></p>

<b><u>Procurement Reform &amp; Non-Industry-Specific Policy Options</u></b>	<b><u>MGT Recommendations</u></b>	<b><u>Additional Options</u></b>	<b><u>Relevant Findings / Justifications</u></b>	<b><u>Pros &amp; Cons</u></b>
<p>All Industries (R/C-18)</p> <p><i>City Staff Performance Reviews / Incentives</i></p>		<p>Provide incentives to City department staff and managers to exceed annual aspirational goals. Reward significant increases in M/WBE participation through bonuses, compensatory time, or step increases; make compliance with program rules and responsibilities part of job descriptions and performance evaluations of City staff.</p>	<p>Responsibility for success of SBE and M/WBE programs must rest with all departments that have procurement and contracting authority. M/WBE Office also needs additional staffing because several important elements of program are not being actively enforced (e.g., review and audit of good faith efforts documentation, prime contractor failure to honor commitments for M/WBE participation, unfair termination of M/WBEs). (Study pp. 7-22 to 7-24</p>	<p><i>Pro: Positive incentives to staff can help to create a cooperative culture for economic inclusion and for staff to make the extra effort to encourage new firms to participate in City contracts. Consider use of other City perks (e.g., gratis tickets to City performances and athletic events) to reward exceptional performance.</i></p> <p><i>Con: Money for bonuses may be scarce in tough budgetary times. Extra leave may not be adequate incentive.</i></p>

<b><u>Procurement Reform &amp; Non-Industry-Specific Policy Options</u></b>	<b><u>MGT Recommendations</u></b>	<b><u>Additional Options</u></b>	<b><u>Relevant Findings / Justifications</u></b>	<b><u>Pros &amp; Cons</u></b>
<p>All Industries (R/C-19)</p> <p><i>Public / Private “Bridging the Gap” Initiative</i></p>		<p>City should establish a public/private partnership with Chambers of Commerce, Minority Supplier Diversity Council, and other minority trade associations to promote greater use of M/WBE suppliers in City private sector. A “Bridging the Gap” Initiative similar to that of Baltimore City would conduct research to build the business case for economic inclusion, and recruit major business leaders to commit to establishing long-term relationships with M/WBE vendors and suppliers that have successful performance track record with City.</p>	<p>MGT Study reflected near virtual exclusion of M/WBE firms in private sector. This greatly limits the growth of M/WBE firms and is a drag on the vitality of the Greensboro-Winston Salem- High Point regional economy. Significant business-to-business sales are lost; job creation is also stymied. Lost revenue resulting from lower business formation rates and lower employment levels translates into a smaller tax base and smaller tax revenues.</p>	<p><i>Pro: After many years of modest progress under the M/WBE program, a concerted effort to improve private sector participation of M/WBE firms holds the greatest promise for growth and full integration of M/WBE firms in the mainstream of the regional economy. This also holds the greatest promise for new job growth and new economic development in the Greensboro CSA region.</i></p> <p><i>Con: Must overcome prevailing attitude that private sector business is not a concern of City.</i></p>



<u>Procurement Reform &amp; Non-Industry-Specific Policy Options</u>	<u>MGT Recommendations</u>	<u>Additional Options</u>	<u>Relevant Findings / Justifications</u>	<u>Pros &amp; Cons</u>
<p>All Industries (R/C-20)</p> <p><i>M/WBE Matchmaker Conference / Procurement Forecasts</i></p>		<p>M/WBE Office should convene an annual Matchmaker Conference with M/WBEs, City buyers, P-card holders, and prime contractors to advise them regarding upcoming major contracting and procurement opportunities; also provide networking opportunities for buyers, contractors, and vendors to get to know one another.</p>	<p>Several M/WBE firms stated that they were unaware of upcoming contracting opportunities, and perceive other firms have better information about future opportunities. (Study pp. 7-25 and 8-9; Finding 8-18)</p>	<p><i>Pro: Enhances competition for upcoming procurements and breaks down barriers and bias to use same firms over and over again; provides SBEs and M/WBE firms with extended time to prepare for upcoming bids.</i></p> <p><i>Con: Requires City buyers and contracting officers in various departments to make themselves more accessible to vendor community, which may detract from other more traditional duties.</i></p>